Truck Drivers & Helpers Local No. 170, International Brotherhood of Teamsters, AFL–CIO and Teamsters Joint Council No. 10 of Massachusetts, Maine, New Hampshire, Rhode Island and Vermont, a/w International Brotherhood of Teamsters, AFL–CIO (Leaseway Motor Car Transport Company) *and* James R. Fiori. Case 1–CB–9082

May 3, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On August 13, 1998, Administrative Law Judge James L. Rose issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief and a brief in support of the judge's decision, and the Respondent filed a reply brief. The General Counsel also filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief. The International Brotherhood of Teamsters, AFL–CIO, as amicus curiae, filed a brief in support of the Respondent and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(b)(1)(A) by imposing intraunion discipline against Charging Party James Fiori and another union member and by removing Fiori from elected union office. For the reasons set forth below, we reverse and dismiss the complaint.

The essential facts are undisputed. In 1991, while working for Tresca Brothers Concrete Company, Fiori suffered a disabling work-related injury and began receiving workmen's compensation. In May 1991, the employees of Tresca commenced a strike. Throughout the strike, which lasted until April 1994, Fiori received both strike benefits from the Union and workmen's compensation.

In 1994, Fiori was elected vice president of Local 170. During the 1996 election of the general president, Fiori openly supported James Hoffa over incumbent General President Ron Carey. Shortly before the election, a campaign leaflet was distributed among the membership accusing Fiori of "double-dipping" by receiving strike benefits while collecting workmen's compensation during the 1991–1994 strike. The leaflet urged members to vote for Ron Carey for general president, and concluded with the phrase: "FIVE MORE YEARS OF RIDDING THE TEAMSTERS OF CORRUPTION."

After the election, in which Carey defeated Hoffa, the Respondent's secretary/treasurer, Richard Foley, filed internal union charges against Fiori alleging that Fiori had improperly received strike benefits during the 1991–1994 strike in violation of the International constitution. The Local 170 executive board found merit in the charges. Fiori was removed as vice president, ordered to repay $26,000 in strike benefits, and was ultimately suspended from membership in Local 170.[2]

Union member Julio Fontecchio testified on behalf of Fiori in the proceedings against him. Based in part on Fontecchio's testimony, Foley also filed internal union charges against Fontecchio alleging that he, too, had improperly received strike benefits while also collecting workmen's compensation in violation of the International constitution. The charges were still pending at the time of the unfair labor practice hearing.

Applying then-current Board law, the judge concluded that the Respondent violated Section 8(b)(1)(A) by imposing intraunion discipline against Fiori and by removing Fiori from office, because he found that those actions were in reprisal for Fiori's intraunion political activities and beliefs. The judge concluded further that the Respondent's actions against Fontecchio violated Section 8(b)(1)(A) because he found that the action would not have been taken against Fontecchio but for the Respondent's attempt to punish Fiori for his dissident activity.

After the judge's decision in this case issued, the Board issued its decision in *Office Employees Local 251 (Sandia National Laboratories),* 331 NLRB 1417 (2000). The Board held in that case that it will "no longer proscribe intraunion discipline under Section 8(b)(1)(A) which involves a purely intraunion dispute, and does not interfere with the employee-employer relationship, or contravene a policy of the National Labor Relations Act." Id., slip op. at 10. In so doing, the Board over-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The decision of the executive board was upheld on appeal by Joint Council 10 and the general executive board of the International union. However, the general executive board reduced the amount of the strike benefit Fiori was required to repay to $4480.

ruled the precedent on which the judge relied in finding the discipline of Fiori and Fontecchio unlawful.

As in *Sandia*, this case concerns a purely intraunion dispute resulting in intraunion discipline. There is no indication that the discipline imposed by the Respondent in any way affected Fiori and Fontecchio's employment or opportunities for employment with any employer, or impaired any other policy interests arising under the Act. We therefore find that the Respondent's conduct against Fiori and Fontecchio did not violate Section 8(b)(1)(A).[3] Accordingly, we shall dismiss the complaint in its entirety.

ORDER

The complaint is dismissed.

MEMBER HURTGEN, dissenting.

Contrary to my colleagues, I find that the Respondent Union's actions against James Fiori violated Section 8(b)(1)(A) of the Act. I further find that the Respondent's actions against Julio Fontecchio also violated Section 8(b)(1)(A).

As set forth in more detail by my colleagues, the Respondent removed Fiori from his elected office—that of vice president of Respondent. It also imposed on Fiori a requirement that he pay the Union $26,000—allegedly for improperly collecting strike benefits.[1] This monetary penalty was later reduced to $4480. As the judge found, the Respondent took its actions against Fiori because of Fiori's Section 7 intraunion political activities and beliefs. The judge further found the Respondent filed intraunion charges against Fontecchio because of his support for Fiori.

In my concurrence in *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2000), I concluded that where an underlying dispute between a union and an employee is wholly intraunion and governed by the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), and a union's discipline is wholly internal and nonmonetary, the legality of the union's action is best left to resolution under the LMRDA.

In the instant case, the dispute grows out of intraunion political activities that are governed by the LMRDA. However, the Respondent's actions against Fiori, in reprisal for his activities, were partly monetary. As in *Painters Local 466 (Skidmore College)*, 332 NLRB No. 41 (2000), the discipline affected him "not simply in [his] relationship to the Union, but also in [his] pocketbook." Thus, I would not leave this matter to the processes of the LMRDA. And, since I would entertain part of this case, I would proceed to adjudicate the entire case.[2]

Turning to the merits of the issues, I conclude that the monetary discipline of Fiori was unlawful. It was in reprisal against his Section 7 activity, and it offended policies that are embedded in the nation's labor laws.[3]

The Respondent also violated Section 8(b)(1)(A) by removing Fiori from an *elected* office. As set forth in my dissent in *Service Employees Local 254 (Brandeis University)*, 332 NLRB No. 103 (2000), I distinguish, in this context, between appointed positions and elected positions. The removal was in reprisal for Section 7 activity, and the Union did not have a legitimate interest in countermanding the electoral choice of the employees. For this reason, I conclude that the Respondent's removal of Fiori from his elected office violated Section 8(b)(1)(A).

Finally, inasmuch as the Respondent's actions against Fontecchio were a part of its effort to retaliate against Fiori, I agree that the Respondent violated Section 8(b)(1)(A) by its filing of charges against Fontecchio.

Kathleen McCarthy, Esq., for the General Counsel.
Matthew E. Dwyer, Esq., of Boston, Massachusetts, for the Respondents.
James R. Fiori, pro se, of Medway, Massachusetts, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me at Boston, Massachusetts, on May 18–20, 1998, on the General Counsel's complaint which alleged that the Respondents engaged in certain activity against the Charging Party and another member in violation of Section 8(b)(1)(A) of the National Labor Relations Act. The Respondent generally denied that it committed any violations of the Act.

On the record as a whole,[1] including my observation of the witnesses, briefs, and arguments of counsel, I make the following

[3] In reaching the contrary conclusion that the Respondent's treatment of Fiori and Fontecchio should be found unlawful, our dissenting colleague relies on his concurring opinion in *Sandia* and his dissenting opinions in *Painters Local 466 (Skidmore College)*, 332 NLRB No. 41 (2000), and *Service Employees Local 254 (Brandeis University)*, 332 NLRB No. 103 (2000). We adhere to the views expressed in the majority opinions in each of those cases.

[1] The judge concluded that the Respondent's efforts against Fiori for alleged "double-dipping"—i.e., collecting both strike benefits and worker's compensation—were a pretext to mask its real motive, i.e., to retaliate against Fiori for his Sec. 7 intraunion activity. I agree. In light of this finding, the Respondent's action against Fiori was a monetary penalty for Sec. 7 activity. It did not legitimately seek to recoup moneys owed to the Union.

[2] *Skidmore*, dissenting opinion at fn. 3.

[3] *Scofield v. NLRB*, 394 U.S. 423 (1969).

[1] By agreement of the parties, after the close of the hearing a written transcript of the hearing before Local 170 on March 1, 1997, was received into evidence as GC Exh. 69. Also received into evidence as

FINDINGS OF FACT

I. JURISDICTION

At all material times, Leaseway Motor Car Transport Company has been a corporation with an office and place of business in Framingham, Massachusetts, engaged in the interstate transpiration of automobiles, in conduct of which business it annually derives gross revenues in excess of $50,000 for the transportation of automobiles from the Commonwealth of Massachusetts directly to points outside the Commonwealth of Massachusetts, and annually performs services valued in excess of $50,000 in States other than the Commonwealth of Massachusetts. At all material times Leaseway has been an employer engaged in interstate commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Truck Drivers & Helpers Local No. 170, International Brotherhood of Teamsters, AFL–CIO (the Union or Local 170) represents employees of Leaseway, among other employers, and is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

Teamsters Joint Council No. 10 of Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont, a/w International Brotherhood of Teamsters, AFL–CIO (the Joint Council), of which the Union is a constituent member, is admitted to be, and I find is, a labor organization within the meaning of Section 2l(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

The principal facts of this dispute are largely uncontested. In 1991 James R. Fiori worked for Tresca Brothers Concrete Company. He suffered a disabling work-related injury and began receiving temporary total disability compensation. In May 1991 the employees of Tresca Brothers (and apparently other concrete companies in the area) went on strike. Fiori asked his business agent if he would be able to collect strike benefits since he was drawing workmen's compensation. He was told that he would, as long as he performed the picketline and other duties required of strikers. This was affirmed by the Union's then-Secretary/Treasurer Ernest Tusino, who had discussed the matter with the then-general president of the International Brotherhood of Teamsters, William J. McCarthy.

Fiori received strike benefits during the entire time of the strike, which ended in December 1993. And he received workmen's compensation during this period. A year later Fiori settled his compensation claim for a lump sum payment.

Though the current secretary/treasurer of the Union, Richard Foley, and others involved in the subsequent discipline of Fiori seem to contend they knew nothing about his receiving strike benefits, the documentary evidence and credited testimony of Julio Fontecchio lead me to conclude that Fiori's situation was generally well-known. Fontecchio also received strike benefits, though he was on workmen's compensation disability, as did Shop Steward Tom Mathews. Carl Gentile, a business agent for Local 170 at all times material, was the business agent responsible for Tresca Brothers employees during the strike. He was not called as a witness by the Respondent, from which I can infer that he would not have denied knowledge of Fiori's disability. As business agent, Gentile made at least some of the strike benefit payments.

In the fall of 1994 Fiori ran for vice president of Local 170, on a slate headed by Tusino. Campaign literature signed by Tusino, among other things, criticized former Business Agent Victor Nuzzolilo, who was again a candidate on an opposing slate. Fiori and others on the Tusino slate were elected. Nuzzolilo narrowly missed being elected and he protested. There was a recount by the Department of Labor, and he was installed as one of the Union's three business agents in early 1995.

In May 1996, Tusino was ousted from office by General President Ron Carey, purportedly as a result of a Board case wherein Tusino was found guilty of nepotism.[2] The executive board of Local 170 replaced Tusino with Foley. At a party on May 19 celebrating Foley's election, George Cashman, an International vice president elected on the Carey slate, asked Fiori for his support of Carey and himself. Fiori declined stating that Carey had wrongfully ousted Tusino. Fiori said that maybe sometime in the future he would support Cashman, but he would not support Carey.

Thus, by the summer of 1996, Foley was the secretary/treasurer, Nuzzolilo was a business agent, and Fiori was the vice president of Local 170. Foley and Nuzzolilo were two of the four Local 170 delegates to the International convention that July and Fiori was one of the three alternates. During the convention Tusino's appeal of his suspension was considered by the delegates, and was affirmed. Nuzzolilo took an active role against Tusino while speaking in favor of Carey and against James Hoffa, Carey's opposition in the forthcoming election for International officers.

At the convention, Fiori made a comment to other delegates to the effect that Nuzzolilo had worked during a strike. Nuzzolilo told others that he would "get" Fiori for embarrassing him.

In early November, during the runup to the election of the general president and other officers, a flyer was distributed to the Union's membership which reads, in part: "Jim Fiori, part-time VP for Local 170 and long-time lackey for Ernie Tusino, went out on worker's comp about one week before Tresca Concrete in Millis, Massachusetts went on strike. On comp Fiori was earning $500 per week. Tresca Teamsters were out on strike for three years. During the strike, Fiori was double dipping in the IBT strike benefits for another $200 per week." There are then allegations about how much Fiori made during the 3 years, "facts" about the International's finances and at the bottom:

GC Exh. 70 is a letter to the Charging Party from the Union dated June 22, 1998, enclosing a decision of the general executive board (received into evidence as R. Exh. 19) and demanding payment in the reduced amount of $4480. On July 28, 1998, counsel for the Respondents filed a motion to submit an additional brief in reply to GC Exh. 70. That motion is granted and the brief considered.

[2] Case 1–CB–8132. No exceptions were taken to the decision of the administrative law judge, and it was affirmed by the Board on September 1, 1994.

X VOTE RON CAREY '96 SLATE X

FIVE MORE YEARS OF RIDDING THE TEAMSTERS OF CORRUPTION

Nuzzolilo, who disclaimed authorship, nevertheless stated at the November membership meeting that he contacted the International about Fiori's alleged unlawful taking of strike benefits and thus began the chain of events leading to this complaint.

On November 8, Foley wrote Tom Sever, the general secretary-treasurer, generally outlining Fiori's situation and asking for a decision "as to whether or not a member is entitled to receive both strike benefits and worker's compensation at the same time, or if there are any constitutional violations in regards to this matter." To this letter Foley attached a copy of the pro-Carey flyer described above.

Sever's answer of November 21 includes the following:

> Article XII, Section 15(a) provides that out-of-work benefits may only be paid "if such member employees shall have become unemployed as a direct result of a strike . . . ." Assuming that the facts you state in your example are correct, the member in question, Brother Jim Fiori, was apparently already unable to work as the direct result of a disabling injury on the date that the Tresca Brothers Concrete strike commenced. As he was not unemployed as the direct result of the strike, and apparently remained on worker's compensation throughout the entire strike, he would not have been eligible for strike benefits at any time during that period.

On January 14, 1997, Mary T. Connelly of the International legal department wrote Foley stating that under the International constitution, it would be Local 170's "responsibility to recover the strike benefits improperly paid to Mr. Fiori." This was subsequently calculated to be $26,345.

Then on February 3, 1997, Foley filed charges against Fiori for having wrongfully collected "strike benefits" with the hearing before the executive board of Local 170 set for March 1. Prior to the hearing, Fiori was removed as vice president, a move found unconstitutional by Sever since it occurred prior to any hearing. Nevertheless, at the hearing on Foley's charge, among other things, Fiori presented affidavits from Tusino and McCarthy to the effect that Fiori was authorized to receive strike benefits and that his eligibility was not violative of the International constitution. Nevertheless, a majority of the executive board voted Fiori guilty.

Fiori appealed this decision to Joint Council 10 on March 11. On March 12, Local 170 made a demand on Fiori for $26,345. The executive board of the Joint Council held 2 days of hearings and on June 26 rendered a written decision finding that Fiori "wrongfully collected out-of-work benefits for which he was ineligible under the International Constitution. As a consequence of his actions, Brother Fiori has violated Article XII, Section 15(a)." The Joint Council affirmed the decision of Local 170 and additionally ordered him to make restitution in the amount of $26,345.

As noted above, subsequent to the hearing here, the general secretary-treasurer made a written decision and recommendation to the general executive board affirming the decision of the Joint Council, but finding that (a) Fiori had prematurely been removed from his position as vice president and (b) since he fully participated in strike related activities, all but $5000 of the strike benefits should be forgiven. This figure was further reduced to $4480 to reflect the 2 months' stipend Fiori was denied by his premature removal from office.

One of Fiori's witnesses in the proceedings against him was Julio A. Fontecchio, who also was an employee of Tressa Brothers and who also received strike benefits while on workmen's compensation. On March 31, 1997, Foley filed charges against Fontecchio with Local 170. At the time of the hearing this matter was pending.

B. Analysis and Concluding Findings

In brief, the General Counsel contends that Fiori was stripped of his office and required to repay $26,345 (and threatened Fiori with suspension from membership if he refused) because of his support of former Secretary-Treasurer Tusino and of James Hoffa for general president.[3]

The Respondents argue that the actions against Fiori by Local 170 and the Joint Council did not affect his employment, and in any event, were simply a result of Fiori having accepted strike benefits while receiving workmen's compensation in violation of the International constitution, article XII, section 15(a).

As a general matter, unions are free to enforce against members and officers rules which reflect legitimate union concerns. However, they may not, under the guise of doing so, invade the rights of members embodied by Congress in the Federal labor laws—specifically the right to participate freely in internal union affairs and to oppose the incumbent leadership. *Teamsters Local 579,* 310 NLRB 975 (1993). Thus, discipline of a member or/and officer because of his internal union political activity is violative of Section 8(b)(1)(A), notwithstanding that the punishment has not affected the individual's employment. *Laborers Local 652 (Southern California Contractors' Assn.),* 319 NLRB 694 (1995).

This case is not about whether the Union, or the International, could have a policy prohibiting those on temporary total disability from receiving strike benefits, whether or not such a policy is set forth in the constitution. There are rational policy arguments on both sides of such rule. Denying strike benefits to those on disability compensation would certainly be a reasonable rule and even if not, it is not the Board's province to make a judgment on it, so long as enforcement of the rule "impairs no policy Congress has imbedded in the labor laws." *Scofield v. NLRB,* 394 U.S. 423, 430 (1969). However, the evidence of record convinces me that neither the International nor the Union had such policy.

Nor is this case about the patent unfairness of punishing Fiori for actions which the highest authorities in the local and international led him to believe were legitimate. A labor organization does not have to be fair, so long as "union discipline

[3] Counsel for the General Counsel argues that in no case can an elected officer be disciplined for violating union rules and to do so violates Sec. 8(b)(1)(A). No Board authority was cited for this proposition and I reject it. Cases cited under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 et seq. are inapposite.

does not interfere with the employee-employer relationship or otherwise violate a policy of the National Labor Relations Act." *NLRB v. Boeing Co.,* 412 U.S. 67, 78 (1973).

The issue is whether Local 170 and the Joint Council found a constitutional violation in order to strip Fiori of his office (and potentially his membership) because of his internal political activity in opposition to that of a majority of the executive boards of Local 170 and the Joint Council.

I conclude that Fiori's alleged unlawful "double-dipping" was a pretext to disguise the true motive for bringing charges against him; namely, his support of Hoffa against the incumbent Carey in the 1996 general election, and, in part, his continued support for Tusino.

First is the timing. That Fiori was on compensation and also receiving strike benefits from 1991 through 1993 was well known. If not known to the entire membership, his doing so was at least known to the business agent servicing Tressa Brothers, the Union's secretary-treasurer, and the general president. Even though Fiori ran for office in 1994 in a contested election, the fact he had received strike benefits was apparently not an issue. At least there is no evidence it was. Fiori's alleged violation of the International constitution became an issue only in 1996 during the general election, and after he had stated his anti-Carey sentiments.

Second is the clearly bogus basis for finding Fiori in violation of the International constitution. General Secretary/Treasurer Sever quoted from article XII, section 15(a) in giving Foley his opinion that Fiori unlawfully received strike funds. Article XII, section 15(a) was the basis of Foley's charge, Local 170's decision and the decision of the Joint Council, and again was quoted by Sever in his recommended decision affirming the Joint Council. The rationale for punishing Fiori thus came full circle. It began with Sever's response to Foley and ended with Sever's decision.

By its clear and unambiguous wording, article XII, section 15(a) is not germane to the facts. The language quoted by Sever, and others, is a phrase taken out of context. This section clearly deals with situations in which as a result of a strike by Teamster members, other members not directly involved in the labor dispute are nevertheless out of work.[4] This section of the constitution neither allows nor proscribes strike benefit payments to members who are out of work because of an industrial accident. The phrase relied on by the Respondents is imbedded in a sentence authorizing benefits for certain members not themselves participating in a strike. One need not be familiar with the niceties of statutory construction to realize that this phrase is not a rule of general application.

I note that in his recommended decision to the general executive board, Sever stated, without citation or any asserted factual basis, that "the International Union has always consistently determined at all times relevant to this case that members who are already unemployed before a strike commences are not 'unemployed as a direct result of a strike' and therefore are not eligible for out of work benefits. This includes persons who become unemployed before a strike commences due to on the job injuries." I do not accept this uncorroborated hearsay assertion. If this assertion was true, surely the Respondent would have offered some evidence of past practice.

The International of course could have a rule denying strike benefits to those on workmen's compensation, but it did not, at least by the cited article and section. No other provision of the constitution was advanced by Local 170 or the Joint Council as a basis for concluding that Fiori had wrongfully collected strike benefits.

In fact, the general eligibility provisions for strike benefits are in article XII, section 14, and the bases for being debarred from benefits are in section 15(c), e.g., receiving a week's work (3 days being considered a week's work). If the International actually had a policy of denying strike benefits to those on workmen's compensation, one would expect to find it in section 15(c).

The Board, of course, is not in the business of interpreting the constitutions of labor organizations. However, where an interpretation offered as a reason for punishing a member is so clearly wrong, an inference that the true motive lies elsewhere is warranted. E.g., *Shattuck Denn Mining Corp. v. NLRB,* 362 F.2d 466 (9th Cir. 1966). Here the inapplicability of section 15(a) was argued by Fiori before the Local 170 and Joint Council executive boards. Both ignored this argument. Such is a further indication that the alleged violation of Section 15(a) was pretext.

Finally, General President McCarthy had specifically told Tusino that Fiori and others on workmen's compensation were eligible for strike benefits; and if this required waiving a constitutional provision, it was his prerogative to do so under section 15(d),[5] since the strike involved fewer than 200 members. McCarthy's affidavit to this effect was ignored by Local 170 and discounted by the Joint Council on grounds that his authorization was tantamount to changing article XII, section 15(a) of the constitution. This interpretation would prohibit the general executive board or general president from acting pursu-

[4] The entire sentence in sec. 15(a) in which the language relied on is:

> Benefits shall be paid to all other member employees of the primary employer at all terminals or places of employment of the primary employer involved if such member employees shall have become unemployed as a direct result of a strike involving other Teamster member employees which strike has been approved pursuant to Section 13, and benefits shall also be paid to member employees of an exclusive Contract Hauler employer if such member employees shall have become unemployed as a direct result of a strike involving other Teamster member employees of customers of the exclusive Contract Hauler; provided, the General Executive Board or the General President was advised of the possibility that such member employees might become unemployed as a direct result of such a strike, and provided further, the General Executive Board or the General President shall have approved the payment of benefits to such member employees at the time of approving the request for benefits.

[5] The full test of this subsec.: "(d) Notwithstanding the provisions of this Constitution, the General Executive Board (or the General President if less than two hundred (200) employees are involved) may authorize the payment of out-of-work benefits in any case where it determines that such payment is in the best interest of the International Union."

ant to their authority under section 15(d). In short the Joint Council denied the existence of section 15(d).[6]

In any event, had the executive boards of Local 170 and the Joint Council seriously been attempting to make a reasoned decision, McCarthy's authority, authorization and the reasons for it would not have been treated in such a cavalier fashion.

I therefore conclude that the finding by Local 170 and the Joint Council that Fiori violated the International constitution was a pretext to disguise their true motive in ousting him from his position of vice president of Local 170 and demanding that he repay the strike benefits he received.

Having concluded that the asserted basis for punishing Fiori was a pretext, I infer that the true motive lies elsewhere. I further infer that the motive behind the actions of Local 170 and the Joint Council was Fiori's internal union political activity—specifically his support of Hoffa against Carey. The purported legal basis for punishing Fiori was given by Sever, the International secretary treasurer with Carey. Attached to the letter Foley sent Sever was the pro-Carey flyer. Thus Sever must have known the political position of Fiori. The principal officer of the Joint Council was George Cashman, an International vice president on the Carey slate, who knew that Fiori would not support him and Carey in the forthcoming International election. Fiori was also on the disfavored side of Local 170 politics, continuing to be a vocal supporter of the ousted Tusino.

Given that Fiori's receiving strike benefits was well known and occurred during a 3-year period ending nearly 3 years before it became an issue, at a time when a vigorously contested international election was in full campaign, I conclude that union politics and not the strike benefits was the motivating factor behind the punishment of Fiori. Accordingly, I conclude that Local 170 and the Joint Council thus violated Section 8(b)(1)(A) of the Act.

The charges filed against Juilo Fontecchio for having received strike benefits while on workmen's compensation during the Tressa Brothers strike grew out of the Fiori matter. But for the Union's attempt to punish Fiori because of his internal union political activity, it is clear that no action would have been taken against Fontecchio. I therefore conclude that the attempted punishment of Fontecchio was a result of Fiori's protected activity and was violative of Section 8(b)(1)(A) of the Act.

IV. REMEDY

Having concluded that each Respondent has engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act, including reinstating James Fiori to his position of vice president of Local 170, and make him whole for any losses he may have suffered as a result of his removal from office. In order for the entire membership to become aware of this matter, I recommend that it addition to posting the notice, Local 170 be ordered to include the Order and notice to members in its monthly newsletter to members for 3 months.

[Recommended Order omitted from publication.]

[6] Unexplained by the Joint Council is how the International executive board could waive the no-work requirement of sec. 15(c) in the recent United Parcel Service strike.